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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-901

FRANCIS E. HOLMAN and WILLIAM M. HOLMAN,
Petitioners,

v.

J. PAUL COIE and EVELYN COIE, his wife; CHARLES I. STONE and NAOM STONE, his wife; HAROLD F. OLSEN and JEANNE OLSEN, his wife; ANDREW M. WILLIAMS and EDITH WILLIAMS, his wife; BURROUGHS ANDERSON and ALLISON ANDERSON, his wife; F. THEODORE THOMSEN and GRETCHEN THOMSEN, his wife; JOHN W. ELLIS and DORIS ELLIS, his wife; DEFOREST PERKINS and JEAN PERKINS, his wife; *et al.*,

and

THE BOEING COMPANY, a Delaware corporation,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals of the State of Washington.

OPINION BELOW

The opinion of the Court of Appeals of the State of Washington, entered in this proceeding on May 9, 1974, is reported at 11 Wn. App. 195, and appears as Appendix A

hereto. (App. A-1 through A-19). Petitioners' petition for rehearing was denied by the Court of Appeals, Appendix B (App. A-20, 21). A writ of review was denied by the Supreme Court of the State of Washington on October 24, 1974, and is reported at 84 Wn.2d 1011, Appendix B (App. A-24).

JURISDICTION

This Petition for Certiorari is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Does enforcement by state court of an expulsion clause in a law partnership agreement, construed by the court as being exercisable without affording notice, opportunity to be heard, or good faith, resulting in forfeiture of substantial vested property rights of an expelled partner, constitute state action violative of the due process clause of the Fourteenth Amendment to the United States Constitution?

CONSTITUTIONAL AND STATUTORY PROVISIONS

First section of the Fourteenth Amendment to the United States Constitution, Article 1, Sec. 21 of the Constitution of the State of Washington and Sections 31(1)(d), 31(2), of 38(2)(a)(ii) of the Uniform Partnership Act as set forth in the Revised Code of Washington (RCW) § 25.04.310(1)(d); § 25.04.310(2); and § 25.04.380(2)(a)(ii), attached hereto as Appendix C.

STATEMENT OF THE CASE

Petitioners seek this Court's protection against the deprivation by Washington State of their property interests without due process of law contrary to the Fourteenth Amendment. The "State action" which contravenes the due process Clause is the action of the Washington State

judicial system itself, under which the Washington Court of Appeals (approved by the Washington Supreme Court), by disregarding the clear requirement of "good faith" of a State statute (Uniform Partnership Act) and in a strained construction of a partnership agreement between petitioners and respondents, has sanctioned the deprivation of petitioners' partnership interest without affording them the elemental safeguards of notice, statement of reasons, and opportunity to be heard.

At the outset, petitioners concede that the dispute which gave rise to the litigation below *initially* was purely private in character, with no governmental involvement; and although it is undisputed that respondent partners did oust petitioners from their law partnership by a procedure totally lacking in good faith or due process, that fact *alone* does not justify recourse to this Court. Petitioners also concede that "action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States", and that the Amendment in and of itself "erects no shield against merely private conduct, however discriminatory or wrongful." *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948).

However, when wrongful private conduct was condoned and approved by the highest judicial Court of the State, the delicate constitutional line between State action and non-State action was crossed *instanter* for "the judicial act of the highest court of the State, in authoritatively construing and enforcing its law, is the act of the State", *Twining v. New Jersey*, 211 U.S. 78, 90-91 (1908), and "The action of State courts in imposing penalties or depriving parties of their substantial rights without providing adequate notice and opportunity to defend, has,

of course, long been regarded as a denial of due process of law guaranteed by the Fourteenth Amendment." *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 672, 680 (1930).

We will let the facts, as shown by the opinion of the Washington State Court of Appeals, speak for themselves. Said opinion significantly noted that the disposition of this case could well be considered "guillotine" justice and "shock the sensibilities" of some (App. A-14). It justified its action, however, on the basis that, viewed in a certain perspective, it eliminated possible unpleasant statements which might arise were the petitioners given an "opportunity to be heard", and thus the end result was "more merciful". (App. A-14)

Petitioners and the individual respondents were, in May 1969, partners, and all members of the Washington State Bar practicing law together in a large law firm in Seattle, Washington. Petitioner Francis E. Holman had been with the organization for 28 years and petitioner William M. Holman for 20 years. Both served on the ten-member Executive Committee which under the partnership agreement administered the affairs of the firm. On May 13, 1969, respondent Perkins, as managing partner, on less than two hours' notice to petitioner Francis E. Holman, and on only about three hours' notice to petitioner William M. Holman, called a special meeting of the Executive Committee at 8:00 P.M., at which time he announced that the purpose of the meeting was to expel petitioners from the law firm. Petitioners asked the reasons for the proposed action, were advised that no reasons were to be given, nor any discussion permitted other than as to the mechanics of petitioners' removal from the

firm. Thereupon, respondent Perkins read the expulsion resolution, already prepared. It was promptly adopted by a vote of seven to two, petitioners voting nay.

As a result of their expulsion, sprung on them by surprise, without any notice of the purpose of the meeting, with only minimum notice there was even to be a meeting, without being given reasons for the action or an opportunity to be heard, petitioners suffered severe losses. By the terms of the partnership agreement, petitioners, upon their expulsion, forfeited ten percent of their proportionate share of the firm's physical assets, accounts receivable and inventory of work-in-progress; all interest or expectancy in the firm's retirement plan; fringe benefits, such as insurance; and immediate loss of contact with substantially all of the principal clients for whom they had over the years performed highly specialized and responsible work.

Thus petitioners suffered damages both tangible and intangible, measurable and immeasurable. They were deprived of substantial vested property interests worth thousands of dollars at present value. But was such deprivation due to a denial of due process as a result of "State action"? At this point, the answer would clearly be negative, for the State had not yet become involved.

Petitioners then commenced litigation in the state court against respondents, contending that their expulsion was wrongful, in that it had not been in good faith (*bona fide*), that therefore the consequent dissolution of the partnership was wrongful, and that they were entitled to damages for breach of the partnership agreement.

Washington adopted the Uniform Partnership Act in 1955 (RCW 25.04). Under Section 31(1)(d) of the Act

(RCW 25.04.310(1)(d)) dissolution of a partnership caused by expulsion of a partner *bona fide* and in accordance with a power conferred by the partnership agreement does not violate such agreement. But under Section 31(2) of the Act (RCW 25.04.310(2)) a dissolution of a partnership caused by expulsion which is not *bona fide* is deemed to be "in contravention of the agreement." Under Section 38(2)(a)(ii) of the Act (RCW 25.04.380(2)(a)(ii)), where the dissolution is in contravention of the partnership agreement, any partner who has not caused wrongful dissolution is given a right to damages for breach of the agreement against the partners who did so cause such wrongful dissolution.

In this case the partnership agreement empowered the Executive Committee to expel a partner on a vote of an absolute majority thereof, the agreement being silent as to the giving of notice, a statement of reasons, a showing of good cause, or a hearing. However, as pointed out by the Washington State opinion, Supplemental Rules of Procedure were adopted by the Executive Committee, and these Rules did provide not only for giving of notice of the meeting but of matters to be taken up on the agenda. No such notice or agenda was given to petitioners of the meeting called to expel them. However, the Court of Appeals held that these Rules did not govern and "must take subservience to the general partnership agreement" (App. A-8).

The contention that petitioners were wrongfully expelled, and thus compelled to suffer forfeiture of vested property interest, does not mean that petitioners claim respondents were required to continue the practice of law with them as partners, although respondents have

successfully thus far persuaded the courts that this was petitioners' contention. It does mean, however, that if State action has condoned a lack of "due process" then petitioners are entitled to a trial by jury (as provided by Article I, Section 21 of the Washington State Constitution) (App. A-25) *as to their damages* RCW 25.04.380(2)(a)(ii) (App. A-26).

At the trial before the jury, the evidence showed (a) that less than a month before the expulsion a top executive of the Boeing Company, a firm which provided approximately a third of the firm's business, highly agitated by a speech on taxation made by petitioner Francis E. Holman, as a State Senator on the floor of the Washington State Senate, called respondent Perkins, the managing partner of the law firm, and falsely charged Senator Holman with not only giving erroneous information to the Senate, but with divulging facts regarding Boeing, thereby violating the confidences of a client; (b) that Senator Holman was never advised of this charge; (c) that shortly thereafter, on May 7, 1969, a meeting of all available members of the Executive Committee (except petitioners) was held at Boeing's private meeting room at the Olympic Hotel in Seattle, where after nine and one-half hours' discussion a "consensus" to expel petitioners was reached; (d) that respondent Perkins was directed to prepare the expulsion resolution and review it with other members of the Committee; (e) that no notice was to be given to petitioners, no reasons should be advanced even if asked for, and no discussion permitted on the merits of the resolution; (f) that respondent Anderson stated that petitioners should be given notice and an opportunity to be heard as a matter of "due process"; (g) that Anderson had been

"out-voted" by the others; and (h) that the meeting of May 13, 1969, carried all of this into effect as has been previously described. Petitioners have continually contended that none of this could be said to be in good faith, *bona fide*, or in accordance with the most elemental aspects of substantive and procedural due process.

The trial court, making findings of fact of its own: (a) that the partnership agreement was not intended to include the Supplemental Rules of Procedure, and (b) the meeting of the other partners on May 7th was an "informal meeting"—not an Executive Committee Meeting to which petitioners had not been invited—thus, no conspiracy as charged by petitioners, held petitioners were not entitled to notice, reasons, good cause, opportunity to be heard, no damages, and dismissed the action at the close of petitioners' case on a challenge to the sufficiency of the evidence. Here for the first time arises "State action" by an arm of the State judicial power. But it did not at this point become State action resulting in a deprivation of property without due process of law because petitioners appealed to the Court of Appeals.

The Court of Appeals affirmed the trial court. Petitioners sought a writ of review by the Washington Supreme Court which was denied, thereby rendering the Court of Appeals decision the final judgment of the State. It is this decision and the consequent judgment which, if allowed to stand, constitutes "State action" which is support for the writ of certiorari to this Court.

Petitioners timely raised, both in their brief in the Court of Appeals and in their petition to the State Supreme Court for a writ of review, the Due Process contention which is the basis for this petition for a writ of certiorari.

REASONS FOR GRANTING WRIT

I. The Decision of the Washington Court of Appeals Constitutes "State Action" Violative of the Fourteenth Amendment

Undoubtedly a majority of cases which come before this Court, involving a claim that a State or an agency of a State has taken action causing deprivation of rights guaranteed by the Fourteenth Amendment, originate under the Civil Rights Act where the grievance inflicted is under color of a State statute, ordinance or regulation. In such cases, the constitutional violation has already occurred or is threatened, and its consequences suffered or anticipated, prior to the commencement of legal action by the party seeking redress. At the outset the issue then is whether the State or its agency has so involved itself that the wrongful action against the injured party may fairly be said to have been directed or authorized by the State.

Often the State involvement is direct and obvious, where, for example, the actor is a State official or agency and the alleged wrongful act is performed by him or it pursuant to statutory or administrative authority. Thus, termination of public employment by a State agency without affording the party terminated the fundamental safeguards of notice, statement of reasons and an opportunity to be heard, violates the due process clause. *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sinderman*, 408 U.S. 593 (1972).

Often State involvement is not obvious on its face. As stated by this Court, "Only by sifting facts and weighing circumstances can the non-obvious involvement of the State in private conduct be attributed its true significance." *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722 (1961).

In *Burton, supra*, the wrongful act (racial discrimination) was performed by a private party, but since he was leasing space for his restaurant from a State parking authority, this Court, after analysis of all the facts and circumstances, found a violation of the Equal Protection Clause of the Fourteenth Amendment. In *Jackson v. Metropolitan Edison Co.*, ... U.S. ....., 43 LW 4110 No. 73-5845 Dec. 23, 1974, this Court observed that in the *Burton* case Delaware had so far insinuated itself into a position of interdependence with the restaurant that it was a joint participant in the enterprise.

There are also occasions where the private actor is itself in a business which is so heavily regulated and supervised by the State that its conduct has been treated by this Court as "State action", to the extent of requiring further scrutiny to determine whether constitutional standards have been transgressed. *Public Utilities Commission v. Pollak*, 343 U.S. 451 (1952). And yet, as shown in *Jackson, supra*, the mere existence of extensive State regulation of a business will not, without more, convert into "State action" for Fourteenth Amendment purposes conduct which, however harmful, is essentially private in nature, i.e., a private power company shutting off electric service to a customer without notice. (However, even in *Jackson*, it should be noted that at least two members of this Court, and possibly a third, were of the view that "State action" was established).

It is tempting indeed for petitioners to observe that the business of the practice of law is subject to State regulation, and that this circumstance in and of itself might well justify characterizing the wrongful act in this case as "State action." Lawyers after all are regarded "officers of the

court." Especially so in Washington State which, since 1933, has had an integrated bar (RCW 2.48) so that the State Supreme Court is vested with and exercises complete jurisdiction over conduct and discipline of lawyers. Logically and historically the legal profession is a business "affected with the public interest" warranting State regulation.

But the "State action" doctrine involved in the Fourteenth Amendment has not been expanded into a broad principle that all businesses "affected with the public interest are State actors in all their actions." *Jackson v. Metropolitan Edison Co., supra,* citing *Nebbia v. New York,* 291 U.S. 502 (1934). As stated by Mr. Justice Rehnquist in *Jackson,*

> "Doctors, optometrists, lawyers, Metropolitan, and *Nebbia's* upstate New York grocery selling a quart of milk are all in regulated businesses, providing arguably essential goods and services. We do not believe that such a status converts their every action, absent more, into that of the State." (43 LW at 4111).

In petitioners' situation, it is not the simple fact that they and respondents were all lawyers subject to State regulations that establishes the necessary ingredient of "State action." It is rather the fact that the State, through its judicial arm, by the final action of the Court of Appeals, as approved *sub silentio* by the State Supreme Court, has enforced against petitioners an agreement containing an admittedly "guillotine" procedure which, as so construed by that Court denies them due process, as a result of which "State action" they have been deprived of substantial vested property interests.

Completely disregarding the Supplemental Rules of Pro-

cedure, the Court of Appeals, under the guise of a conclusion of law, made a finding of fact saying: "We find this partnership agreement to be unambiguous, and not to require notice, reasons or opportunity to be heard." (App. A-12). The effect of its conclusion was exactly the same as if the agreement had contained a clause expressly negating due process. Such a clause, written into an agreement between private parties, would not, of course, standing alone, and not passed upon by the judicial arm of the State, be subject to a Fourteenth Amendment attack. As this Court has pointed out in *Shelley v. Kraemer, supra*,

> "The restrictive agreements standing alone cannot be regarded as violative of any rights guaranteed to petitioner by the Fourteenth Amendment. . . So long as the purposes of those agreements are effectuated by voluntary adherence to their terms, it would appear clear that there has been no action by the State and the provisions of the Amendment have not been violated." (334 U.S. at 13).

The violation of the Fourteenth Amendment in *Shelley v. Kraemer* occurred not when the covenants were incorporated in the agreement, and not when the covenantees brought their action to enforce them, but occurred when the Missouri Supreme Court, as an arm of the State, undertook to sanction their enforcement. It was at that point that "State action" was taken.

Consider the converse situation: Suppose Mr. Shelley had brought a suit for damages for a breach of a real estate contract and had been met with the defense that performance was barred by the racially restrictive covenant of which he had notice. If the Missouri Supreme Court had sustained that defense and denied his relief on that basis, State action would have occurred, justifying exactly the

same decision as this Court came to in the actual case.

Likewise here, when the Washington Court of Appeals sustained the defense, based upon its interpretation of a written agreement which provided forfeiture of petitioners' partnership rights without notice, opportunity to be heard, or other requirements of due process, then State action has clearly occurred.

On the issue of "good faith" the Washington Court of Appeals was equally explicit. It acknowledged the requirement of "bona fide" in Section 31(1)(d) of the Uniform Partnership Act, the existence of which is necessary in order that a partnership dissolution caused by expulsion be deemed not violative of the partnership agreement (App. A-12). Next it refers to numerous cases in Washington and other States establishing the general rule "that the partners in their dealing with each other must exercise good faith." (App. A-13). Next is acknowledges authority that "bona fide" or "good faith" requires compliance with basic procedural due process standards, and states that "in every contract, including partnership agreements, there is an implied covenant of good faith, fair dealing and cooperation by the parties to the contract." (App. A-13). And finally, the Court of Appeals stated:

> "An article in 33 B. Davies, Conveyance and Property Lawyer, *Good Faith Principle And The Expulsion Clause in partnership law* 32, 42 (1969), published in England, states in part:
>
> "'Should the situation be one involving an "expulsion" . . . and the dispute . . . is determined by the majority of partners, it is submitted that the application of the rules of natural justice are an essential legal pre-requisite in the determination of the partnership dispute. This is so because partners

> in this circumstance are acting as a "tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals.'"
>
> "The article concludes that prior to expulsion, a partner is entitled to notice, the reasons, and a hearing, much as has been found by our courts under the phrase 'due process of law.'" (App. A-14).

Having thus demonstrated with ample authority the necessity for good faith and due process standards, as contended by petitioners, the Court of Appeals incredibly concludes:

> "*We choose not to follow Mr. Davies.* These parties in writing the partnership clauses dealing with expulsion, and the defendants who carried them out, chose to adopt the *guillotine approach*, rather than a more diplomatic approach, to the expulsion of partners. The actions of defendants were within the contemplation of the agreement. *While this course of action may shock the sensibilities of some*, to others it may be that once the initial decision is made, the traumatic reaction to that decision is more quickly overcome and the *end result more merciful.*" (App. A-14). (Italics supplied)

The language of the Court of Appeals would do credit to the Jacobins during the French Revolution, who could well have used the analysis of the Court of Appeals and, reading out of the law any requirement of due process, condoned the death sentences of the drumhead tribunals on the ground that ". . . the traumatic reaction to that decision is more quickly overcome and the end result more merciful."

Thus, we have here the definitive exercise of the State's power, expressed through its judicial arm, sanctifying with its own official *imprimatur* a provision in a written agree-

ment which is frankly characterized as "*the guillotine approach*" despite its recognition that it offers neither procedural "due process" nor "good faith." Thus, we have a demonstration of "State action" in its most obvious, odious and obnoxious form.

II. Such "State Action," Confirming the Denial of "Due Process", Results in a Deprivation of Substantial Property Rights of Petitioners

It is undisputed that, on May 13, 1969, each petitioner had a vested interest in the law partnership, including its capital assets, its accounts receivable, its inventory of unbilled work-in-progress, plus substantial fringe benefits such as insurance and potential retirement plan rights and future business prospects; upon their expulsion they forfeited ten percent of their share of the capital assets, accounts receivable and work-in-progress, and all of the fringe benefits. All of such losses are measurable. In addition, they lost the unmeasurable and tangential benefits that inevitably are associated with a large metropolitan law firm well-known throughout the nation.

If and when the Court of Appeals decision becomes absolutely final, as will surely occur if this writ of certiorari is denied, final judgment in this litigation will have been effected and petitioners will have no further recourse. The deprivation of the above-mentioned rights will thus have become final and irrevocable. This deprivation will have occurred not because of the partnership agreement, not because petitioners and their partners executed it, not because of their expulsion from the partnership, but because the State of Washington will have exercised its power upholding a *guillotine* procedure under the guise of *mercy* depriving petitioners of their vested property interests

and substantially their livlihood. More importantly, it will be taking effect in a profession which has long been thought to be the bulwark of protecting both itself and citizens against encroachments upon the rights provided to all citizens in the State and U. S. Constitutions and particularly the very basic right of "due process". The only barrier remaining to the result offered up by the Court of Appeals is the Fourteenth Amendment to the United States Constitution as interpreted by this Court. This Court has held that the due process clause requires, as a minimum, that parties whose rights are to be affected are entitled to be notified of the proposed action, and they are entitled to be heard, *Baldwin v. Hale*, 68 U.S. 223, 233 (1863), that it is equally fundamental that the right to notice and the opportunity to be heard be granted at a meaningful time and in a meaningful manner, *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The root requirement of a hearing is "that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest." *Boddie v. Connecticut*, 401 U.S. 371, 378-379 (1971).

III. Certiorari Is the Proper Remedy

As pointed out earlier in this petition, most cases which have come to this Court recently, involving a claim under the Fourteenth Amendment, have been brought under the Civil Rights Act. Yet here, this was not possible, unless petitioners were willing to assume that the State would through its judicial processes approve a method and procedure actually used in the case. Not until the Court of Appeals so ruled was such a result considered possible. One does not lightly assume that federal constitutional guarantees will be disregarded by a State judicial arm.

This case can only be dealt with by appealing to this Court acting in its supervisory capacity over State judicial systems to promote both observance of the State's constitutional rights (including the right to trial by jury provided by the Washington State Constitution) (App. A-25) and observance of Federal Constitutional Rights, rather than in seeking to vindicate a federal statutory right, such as the Civil Rights Act. When it becomes apparent that a State's judicial system is unresponsive to the Fourteenth Amendment, then the litigant is entitled to bring it to this Court's attention through the Writ of Certiorari, as was done in *Shelley v. Kraemer, supra.*

CONCLUSION—IMPORTANCE OF THE CASE

Petitioners appreciate that the business of this Court is to review federal constitutional aspects of cases which are brought to it from the judicial systems of the several States, and that matters solely related to State law and policy, as interpreted by those systems, are generally left undisturbed. Viewed only in a narrow sense, this case involves conspiracy, contract law and partnership law, and in particular the Uniform Partnership Act, areas which traditionally are the concern of the States. But in a broader and constitutional sense, the case involves the standards which govern, or ought to govern, the conduct of lawyers between themselves as members of a distinguished profession. Further, it involves the very corporate structure in which most lawyers traditionally and historically practice their profession—the law partnership. This ancient and honorable institution is in effect *sui generis*, since by law and custom it is composed solely of lawyers as officers of the courts, and whose sole business is limited to the practice of law, the

ultimate regulation of which is solely that of the courts. The late Mr. Justice Jackson, concurring in *Hickman v. Taylor*, 329 U.S. 495 (1947), put it this way:

> "But it too often is overlooked that the lawyers and the law office are indispensable parts of our administration of justice. . . . The welfare and tone of the legal profession is therefore of prime consequence to society." (329 U.S. at 514, 515).

If this be true, then is it not also true that good faith conduct of lawyers in carrying on legal practice in partnership form is likewise of prime consequence to society? Justice Traynor, speaking for the California Supreme Court, stated:

> "Even though the Uniform Partnership Act provides that a partnership at will may be dissolved by the express will of any partner [UPA Section 31(1)(b)], this power, like any other power held by a fiduciary, *must be exercised in good faith.*" (Page v. Page, 359 P.2d 41, 44 (Cal., 1961)). (Italics supplied)

Under any civilized standard, is not a person who—with or without cause—is alleged to be subject to expulsion, discharge, impeachment, conviction, reprimand, or any other sanction, at the very least entitled to a minimum opportunity for notice and to be heard in his own behalf? It is undisputed that petitioners were denied both. The sanction by the State of Washington of such denial has deprived petitioners of significant vested property rights without due process of law guaranteed by the Fourteenth Amendment and for these reasons, a Writ of Certiorari should issue.

Respectfully submitted,

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APPENDIX A

Appeal from a judgment of the Superior Court for King County, No. 723217, Stanley C. Soderland, J., entered May 11, 1972. *Affirmed.*

Action for damages. The plaintiffs appeal from a judgment in favor of the defendants.

Stuart G. Oles and *David C. Stewart* (of *DeGarmo, Leedy, Oles & Morrison*), for appellants.

William L. Dwyer (of *Culp, Dwyer, Guterson & Grader*), *William A. Helsell* (of *Helsell, Paul, Fetterman, Todd & Hokanson*, and *Jack P. Scholfield* (of *Guttormsen, Scholfield & Stafford*), for respondents.

Munson, J.—Plaintiffs complained against their former law partners for their expulsion from the firm, alleging damages resulting from a breach of their partnership agreement, breach of trust, and conspiracy; also against The Boeing Company (hereinafter referred to as Boeing) for alleged tortious interference with plaintiffs' contractual relationship with their former law partners, and conspiracy. Plaintiffs also commenced an action in King County Superior Court for an accounting after their expulsion; this action was terminated when plaintiffs took a voluntary nonsuit.

Plaintiffs appeal from a julgment based upon the granting of defendants' motions challenging the sufficiency of the evidence made at the close of plaintiffs' case. We affirm.

Plaintiff Francis Holman joined the defendant law firm, of which his father was a senior partner, in 1941. He was made a partner in 1954 and has worked almost exclusively upon legal matters for Boeing, a firm client. Plaintiff William M. Holman joined the firm in 1949, and became a partner in 1957. During his early tenure he had done legal work for Boeing, but he had not done so for many years preceding the plaintiffs' expulsion from the law firm. Plaintiffs' father retired from the law firm in 1962, after a distinguished legal career.

The law firm, at the time of commencement of this ac-

tion, consisted of 22 partners and other associates. Various partnership agreements had been entered into by the partners over the lifetime of this firm. Both plaintiffs were signators to the agreement controlling this action which was effective January 1, 1968. It provided, as had other previous agreements, that the business affairs of the partnership would be administered by an executive committee, comprised of 10 named partners. Both plaintiffs were members of this committee, which had the right to name new members and expel present members from the firm. The possibility of expulsion is mentioned in over a dozen different places throughout the partnership agreement. The agreement states that "any member may be expelled from the Firm by a majority vote of the Executive Committee," but does not specify whether expulsion shall be with or without cause or list any of the grounds for expulsion.

Subsequent to plaintiffs' association with the law firm, certain members left the firm to take executive positions with several of the corporate clients of the law firm, including Boeing. William M. Allen, who was a senior partner in the law firm at the time Francis Holman joined it, was the president of Boeing at the time of plaintiffs' expulsion. Likewise, during that period of time, James Prince left the law firm and accepted an executive position with Boeing, as had Lowell P. Mickelwait.

William Holman had, over a period of time, raised questions with the executive committee regarding the inadequacy of the legal rates which the firm charged the Boeing Company. He had also questioned other fee structures and the amount of "unchargeable time" accumulated by several of the senior partners for other than legal work. There was testimony by another member of the executive committee that, prior to the admission of William Holman to the executive committee, the committee's meetings had been pleasant, friendly, and characterized by a spirit of unselfishness and devotion to the best interests of the firm. However, after admission of the Holmans, there appeared to develop a polarization among the committee, with the Holmans on one side and the remainder of the committee on the other. There is also testimony which would indicate that a number of years prior to the expulsion some consideration had been given to requesting the Holmans to leave

the firm. Plaintiffs characterized the discussions over Boeing's fees and other matters as those directly related to the business of the firm and matters which, of necessity, had to be discussed by the managerial committee. They were totally unaware that they were in any way polarizing the members of the committee.

In 1965, with the concurrence of the firm, Francis Holman ran for, and was elected to, the State House of Representatives. In 1968, he ran for, and was elected to the Washington State Senate, without seeking the firm's approval—but no objection was made by any member of the firm. There apparently was some unexpressed disapproval relative to the amount of time consumed in legislative service, and the disproportionate money return, to wit $3,600 per year. In 1967, his percentage of income from the partnership business was reduced, because of the amount of time he was spending on legislative matters and in legislative service.

There is testimony that in March 1969, several of the officers of Boeing discussed, with several members of the executive committee, a newspaper article[1] written by a political columnist, which characterized Senator Holman as a "tax reform maverick," and praised him for his independence from his client, principally Boeing. There is also testimony that in April 1969, the president of Boeing took issue with legal fees charged by Francis Holman for legal work which he had done for the company. Francis Holman had not been in charge of the billing for the particular work done, nor had he ever been notified of the complaint until after the lawsuit was commenced.

In mid-April 1969, Francis Holman made a speech before the State Senate regarding personal property tax legislation which was then before the Senate. There may have been some misstatement in the speech or in the reporting of it; in any event, the speech apparently served to aggravate several of the top officials of Boeing. The speech was not recorded; it was extemporaneous; consequently, there are several versions of exactly what was said. In any event, the following day, upon the request of another senator,

1. The article is not in evidence, but reference is made to it by testimony of witnesses.

one area of comment made during the prior day's speech was clarified by Senator Holman.

There was also an allegation by one Boeing executive that Francis Holman had exploited his attorney-client relationship with Boeing by using some of the information obtained as its attorney in commenting upon this legislation.[2]

In April, preceding the speech, the president of Boeing advised the managing partner of the law firm that they desired Francis Holman to do no further legal work on their behalf. This had not been conveyed to Francis Holman, who was performing his legislative duties in Olympia.

On May 7, 1969, the executive committee—the only absent members being plaintiffs and one other member who

2. Excerpts from a deposition taken which were read into the record during the trial recite the following testimony by the managing partner of the law firm with respect to a telephone call he received from Mr. Mickelwait, vice-president of Boeing:

"I asked him for further particulars, and he said that on the 15th, again may I interject here, I cannot recall at this point the exact words, I am making my best attempt to put down on the record the gist and the important substance of the conversation. . . . he said he was particularly distressed that a member of our office would get up on the floor of the Senate and give to the Senate information about the Boeing Company that he, Mr. Francis Holman, knew or should have known was erroneous and he was particularly distressed also because Mr. Francis Holman, in arguing in favor of his position on SJR 1, had in the argument, exploited his relationship with the law firm.

". . .

"Then he went into the latter part of his conversation in which he said something to this effect, he said, I don't care a rap about people from the Boeing Company or from your firm going down and voting as they choose on any particular Bill. He said, as a matter of fact, we have the voting record, not only of Mr. Francis Holman, but also the voting record of eight or nine other Boeing employees, he said. And he said this would demonstrate clearly they have voted, in a good many instances, against the position that the Boeing Company took on various measures. But, he said, I do definitely object to an individual, in order to further his own political career, and in order to further his own political interest, exploiting and flaunting his relationship with the law firm and the Boeing Company, and further giving out information which he knew or should have known was erroneous, and also, then, purporting to represent to the Senate that the information that he had given out and was giving out was correct because it was information that had come to him in his capacity as the lawyer for the Boeing Company."

was on a European trip—met for 9½ hours in the Olympic Hotel. The room was rented by Boeing on at least a semi-permanent basis. Meals ordered by the members present on May 7 were charged to Boeing, a fact learned by the plaintiffs during discovery proceedings; after that discovery, the law firm reimbursed Boeing. Francis Holman was not notified of the meeting; William Holman had been informed earlier that there would be no executive committee meeting on May 7. The seven partners present discussed in detail whether the Holmans should be expelled from the law firm; the record shows the consensus favored expulsion, although neither a formal vote nor formal action was taken.

The 1969 legislative session ended May 12, 1969. Francis Holman returned home the next day about 6 p.m. He was then advised by his brother, William, of an executive committee meeting scheduled for 4 p.m. which had been recessed until 8 p.m. because of Francis Holman's absence; and that he had been advised it was particularly important that both Holmans be present.

William Holman surmised that they were about to be expelled, an impression which became a harsh reality when they appeared at the 8 p.m. meeting. The meeting was convened by the managing partner, who then read aloud a resolution which, without giving cause or reasons, expelled them from the partnership. When they asked the reasons for the resolution, none were stated. A vote was taken; by a 7-to-2 result the partners were expelled. It is this action which serves as the basis for the suit brought against the law firm and Boeing.

At the conclusion of the plaintiffs' evidence, and after lengthy argument, the trial court, in an extensive oral opinion, granted defendants' motion to dismiss on the ground of insufficiency of the evidence.

Individual Defendants

[1] Initially, we examine plaintiffs' position with respect to all the partners of the law firm. The trial court dismissed the action as to all partners of the law firm who were not members of the executive committee stating in its oral opinion that those partners had no power to act and that

the record contained no evidence those partners did anything actionable. This was improper. By their partnership agreement, all partners had designated and authorized the executive committee as the managerial body of the firm. Inasmuch as each partner is responsible for the actions of every other partner, the delegation of the managerial function to certain members did not relieve the other partners of the responsibility for their acts. RCW 25.04.090; *Dygert v. Hansen*, 31 Wn.2d 858, 860, 199 P.2d 596 (1948). Therefore, we find that the dismissal of all partners except those comprising the executive committee was error. However, this is inconsequential unless the dismissal of the members of the executive committee was error.

We first examine plaintiffs' contention that there was substantial evidence to support the breach of contract action against the individual respondents which includes members of the executive committee. It is the general contention of the plaintiffs that the defendant partners breached the partnership agreement by the act of expulsion in (a) failing to give proper notice to the plaintiffs of executive committee meetings on May 7 and May 13, 1969; (b) expelling plaintiffs without cause; (c) failing to state the reasons for expulsion; and (d) failing to allow plaintiffs an opportunity to be heard.

The partnership agreement, section 1.2, states in part:

> any member may be expelled from the Firm by a majority vote of the Executive Committee.

The agreement does not require giving of notice, a statement of reasons, a showing of good cause, or a hearing.

Likewise, section 1.3 in part states:

> When any member . . . is expelled from the Firm, that fact shall be endorsed on the master copy of this agreement . . . , and the person involved shall no longer be a member of the Firm and his rights and obligations shall be as hereinafter stated.

Section 6.1 states that the "Day of Expulsion" is defined:

> for purposes of the calculations, computations and determinations to be made hereunder, shall mean the close of business on the day immediately preceding the effective date of the . . . expulsion . . .

As to the notice of executive committee meetings, the executive committee on January 9, 1968, adopted rules governing its meetings and procedures entitled "Supplementary Rules of Procedure for Executive Committee." They provide, in part, for a regular monthly meeting of the committee, at 4 p.m., on Tuesday before the second Thursday of each month; that special meetings may be called by the managing partner; that written notice of each regular or special meeting, together with an agenda of matters to be covered, shall be prepared by the person or persons calling the meeting and delivered to all members at least 2 days prior to the meeting.

Neither plaintiff was given notice of the meeting on May 7 in the Olympic Hotel. The trial court found that the meeting on May 7 was not a formal executive committee meeting, but was an informal gathering of members of the executive committee. The lack of notice to plaintiffs violated no legal duty to them. It was the trial court's opinion that to hold otherwise, at least inferentially, would abrogate any informal discussions the partners might have amongst themselves about other partners. We agree with the trial court.

Plaintiffs contend *Lycette v. Green River Gorge, Inc.*, 21 Wn.2d 859, 153 P.2d 873 (1944), supports their position that a meeting of the board of directors, *i.e.*, executive committee, is not legally constituted without notice to all directors, *i.e.*, members. *Lycette v. Green River Gorge, Inc.*, *supra* at 863. Plaintiffs allege that their evidence raised questions of fact as to whether or not a decision had been made at the May 7 meeting which was merely carried into fruition on May 13, 1969. They contend the trial court, by ruling as a matter of law, usurped the function of the jury.

[2] The facts here are distinguishable from *Lycette*. Plaintiffs' evidence does not indicate that any formal or binding action was taken by the executive committee on May 7 which would raise the informal meeting to the level of a formal meeting and thus necessitate notice. Here, the binding action of expulsion took place the following week, May 13, when a resolution was read and formally adopted by the executive committee. There was no showing any

member of the executive committee was prohibited or precluded from voting against the resolution as presented on May 13. We conclude, and concur with the trial court that the meeting on May 7 was neither a formal meeting nor was action taken to commit those present to a course of action which could only be validated by subsequent ratification. *See Lycette v. Green River Gorge, Inc., supra* at 864. Thus, *Lycette* is distinguishable. Since it was an informal gathering, the supplementary rules of procedure for the executive committee, including the provision for notice therein, were not applicable.

[3] Plaintiffs claim that the meeting on May 13, 1969, was in violation of section 3 of the rules of procedure of the executive committee, which called for notice of meetings, together with an agenda of matters to be covered. These rules, while drawn for the orderly progression of business coming before the executive committee, were not, in effect, formal bylaws such as a corporation adopts. They must take subservience to the general partnership agreement where there is a conflict.

Paragraph 2.3 of the partnership agreement provides that notice is not a requisite to the validity of any meeting of the executive committee; consequently, the fact that plaintiffs had no advance notice of the meeting is of no effect.[3] It is true there was no agenda provided to plaintiffs prior to the May 13 meeting as is suggested or recommended by the supplementary rules. However, both plaintiffs testified that they believed their possible termination with the firm would be the subject of the 8 p.m. May 13 meeting; William Holman had been informed that afternoon that their relationship with the firm was to be a topic of discussion. We do not find the failure to provide an agenda was a sufficient violation of the partnership agreement to justify holding there was an unlawful expulsion of the plaintiffs.

Plantiffs next urge that defendants' actions on May 13, 1969, violated requirements of due process of law in that they failed to give plaintiffs notice of expulsion, state rea-

3. The same is true of the May 7 meeting and is a further reason why that meeting was not improper. Assuming arguendo that meeting was a formal meeting, no notice was required by the partnership agreement.

sons therefor, and provide plaintiffs with an opportunity to be heard. They contend there was substantial evidence that such requirements were within the intention of the signatory parties to the partnership agreement and can be implied, either from the circumstances, or as a matter of law.

As we have stated earlier, the partnership agreement did not set forth any method of procedure to be followed in an expulsion action. Plaintiffs, in fact, concede the agreement was silent as to any requirement of cause. Consequences of expulsion were detailed in the partnership agreement which provided a method of compensation upon expulsion. We must assume those provisions have been properly complied with in view of plaintiffs' acceptance of the accounting.[4]

Plaintiffs assert that it would be inconceivable to hold anyone bound by the expulsion provisions of this partnership agreement without expecting certain implied provisions of due process to be applicable. This contention is not supported by any evidence and, in fact, is contradicted by the very fact that 22 law partners, including plaintiffs, signed the agreement, even though it contained none of the requirements plaintiffs now contend must be implied. These are not people of limited knowledge, expertise, or proficiency in matters of law. The list of clients represented by the firm, the reputation of particular partners, and the length of service of the individual partners, particularly those of the executive committee, indicates they are knowledgeable in the substantive law and the drafting of instruments, including partnership agreements.

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4. In *Blisset v. Daniel*, 68 Eng. Rep. 1022, 1027 (Ch. 1853), the court considered an expulsion clause comparable to the one in the instant case and concluded that it was one of the:

> most strict character, . . . one which requires no cause whatever to be expressed, or assigned, or entertained by the parties exercising it; . . . it has been exercised in that manner in this case, and without any cause whatever other than the will of the parties . . .

However, in that case, they found a lack of good faith in the manner in which the accounts had been rendered and held, in effect, the accounting had been rendered in a clandestine manner, and while the expulsion had actually been accomplished, the power of expelling them would not be carried into effect by the court.

[4] In this case the express language of the partnership agreement itself must be controlling; that language clearly does not contain any of the requirements plaintiffs now seek to assert as impliedly applicable. Where terms of a contract, taken as a whole, are plain and unambiguous, the meaning is to be deduced from the contract alone. *Dickson v. Hausman*, 68 Wn.2d 368, 413 P.2d 378 (1066); *Hastings v. Continental Food Sales, Inc.*, 60 Wn.2d 820, 376 P.2d 436 (1962). We note further there is no evidence of the partners' intention at the time of drafting the present partnership agreement. They merely included the word "expulsion" without setting forth any requirements for executing such a procedure other than a vote of the executive committee. There is no evidence of any discussions held preparatory to drafting that instrument. There is no evidence concerning the utilization of the language set forth in the agreement in relation to the parties' intentions.

There is, however, testimony by William Holman as to his unexpressed understanding of these contractual provisions. Also, one partner, Mr. Anderson, stated that at the May 7 meeting he urged that plaintiffs were entitled to notice and that it would only be fair to notify them in advance of the actions contemplated by the executive committee. His position was rejected by the committee. Nevertheless, insofar as these statements are asserted to interpret or add to the agreement, they are not probative of the signators' intent at the time the agreement was executed. In effect, the trial court found, and we concur, that the parties intended the writing to be a complete and accurate integration of their previous agreement. *Nashem v. Jacobson*, 6 Wn. App. 363, 492 P.2d 1043 (1972).

[5] As stated in A. Bromberg, *Crane and Bromberg on Partnership*, § 74(d), at 426 (1968): "Expulsion provisions are rare because of each partner's fear that the others may gang up on him." As a consequence, there is very little law on the subject of expulsion. There is, however, case law involving partnership agreements which substantiates the proposition that additional requirements should not be added to unambiguous expulsion provisions.

Smart v. Hernandez, 95 N.H. 492, 66 A.2d 643 (1959), involved a physicians' partnership agreement which pro-

vided that in the event, "all of the other parties deem it desirable . . . that he retire as a member . . . he will upon written notice from them immediately sever his connection therewith . . ." The court at page 496 stated:

> We believe what the parties intended . . . was to provide a simple, practical and above all a speedy method of separating a partner for the interest of the Clinic. . . . To construe paragraph 12 as the defendant argues is to force upon the plaintiffs the very delays and uncertainties which all sought originally to avoid.

In *Gill v. Mallory*, 274 App. Div. 84, 80 N.Y.S.2d 155 (1948), a partnership agreement provided that once a determination had been made that it was not in the best interests of the firm for another partner to continue, such majority in interest "might give him written notice requiring him to withdraw from the partnership on a date to be specified in such notice, and that the effect would be the same as though he had voluntarily retired." There the court stated at page 85:

> [T]he purpose of this clause [was] to avoid, if possible, the legal proceedings involved in dissolution and winding up of the partnership if the members of the firm should find themselves in discord and unable to continue functioning harmoniously as a partnership. . . .
>
> . . . The plaintiffs' contention is that the majority decision was made selfishly and therefore not in good faith. We do not think that it was the purpose of the agreement to offer such an issue to be litigated whenever this clause in the agreement was availed of by a majority in interest. The purpose was to minimize litigation, not to create new issues to be tried in addition to those which would ordinarily be attendant upon dissolution.

In *McPherson v. J. E. Sirrine & Co.*, 206 S.C. 183, 33 S.E.2d 501 (1945), the partnership agreement contained a clause that, "The right to terminate the interest of any one of the partners is hereby vested in the other partners for any cause which in their discretion seems to be reasonable,

. . ." The expelled partner brought an action and the court stated at page 205:

> The contractual verbiage embraces the subject under discussion and involves no ambiguity in either purpose or respect. In almost every case of an involuntary ouster there would be the elements of a controversy. The contract plainly contemplates this.

This particular agreement required notice, and a vote of 75 percent of the partners' interest, to effect a change. The court continued to state:

> It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, . . .

We find this partnership agreement to be unambiguous, and not to require notice, reasons, or an opportunity to be heard. To inject those issues would be to rewrite the agreement of the parties, a function we neither presume nor assume.

Plaintiffs also challenge the expulsion on the basis that there was substantial evidence that it was not bona fide, or in good faith, and contend such a requirement should be implied.

RCW 25.04.310 states: "Dissolution is caused: (1) . . . (d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners; . . ." The partnership agreement here at issue merely states that a partner may be expelled by majority vote of the executive committee with no provisions for cause, reasons, notice or hearing. "Bona fide" is defined as: "In or with good faith; honestly, openly, and sincerely; without deceit or fraud." Black's Law Dictionary 223 (4th ed. 1951).

[6] Undoubtedly, the general rule of law is that the partners in their dealing with each other must exercise good faith.

> The relation existing between copartners is one requiring the exercise of the utmost good faith. Each

> partner is a trustee for all, and no individual or group may take an unconscionable advantage of another.

Danich v. Culjak, 190 Wash. 79, 87, 66 P.2d 860 (1937); *see Karle v. Seder*, 35 Wn.2d 542, 214 P.2d 684 (1950); *cf. Jacobsen v. Arntzen*, 1 Wn. App. 226, 460 P.2d 295 (1969). In *Meinhard v. Salmon*, 249 N.Y. 458, 164 N.E. 545, 62 A.L.R. 1 (1928), Justice Cardozo stated at page 463:

> Joint adventurers, like copartners, owe to one another, . . . duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. . . . Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.

Likewise, a partner is not permitted to derive any profit or advantage from the partnership relationship except with the full knowledge and consent of the partners. *Karle v. Seder, supra; Paige v. Page*, 55 Cal. 2d 192, 359 P.2d 41, 10 Cal. Rptr. 643 (1961). That such is the law cannot be questioned. For other cases imposing the duty of good faith in regard to the rights of others to a contract, *see Cominos v. Kalkanes*, 37 Wn.2d 843, 226 P.2d 863 (1951); *Millet v. Slocum*, 4 App. Div. 2d 528, 167 N.Y.S.2d 136 (1957); 60 Am. Jur. 2d *Partnership* § 115 *et seq.* (1972). However, the personal relationships between partners to which the terms "bona fide" and "good faith" relate are those which have a bearing upon the business aspects or property of the partnership and prohibit a partner, to wit, a fiduciary, from taking any personal advantage touching those subjects. *Rees v. Briscoe*, 315 P.2d 758 (Okla. 1957). Plaintiffs' claims do not relate to the business aspects or property rights of this partnership. There is no evidence the purpose of the severance was to gain any business or property advantage to the remaining partners. Consequently, in that context, there has been no showing of breach of the duty of good faith toward plaintiffs.

There is authority for plaintiffs' contention that the term "bona fide" or "good faith" requires more, *i.e.*, compliance with basic procedural due process standards. In every contract, including partnership agreements, there is an implied covenant of good faith, fair dealing and cooperation by the

parties to the contract. *Miller v. Othello Packers, Inc.*, 67 Wn.2d 842, 410 P.2d 33 (1966). While courts do not rewrite contracts for the parties, they do presume to interpret them in accordance with what the court finds to be the parties' intent. "Good faith" is defined as: "An honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with an absence of all information, notice or benefit or belief of facts which render transaction unconscientious." Black's Law Dictionary 822 (4th ed. 1951).

An article in 33 *Conveyancer and Property Lawyer* (New Series), B. Davies, *The Good Faith Principle and the Expulsion Clause in Partnership Law* 32, 42 (1969), published in England, states in part:

> should the situation be one involving an "expulsion" . . . and the dispute . . . is determined by the majority partners, it is submitted that the application of the rules of natural justice are an essential legal prerequisite in the determination of the partnership dispute. This is so because partners in this circumstance are acting as a "tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."

The article concludes that prior to expulsion, a partner is entitled to notice, the reasons, and a hearing, much as has been found by our courts under the phrase "due process of law."

We choose not to follow Mr. Davies. These parties in writing the partnership clauses dealing with expulsion, and the defendants who carried them out, chose to adopt the guillotine approach, rather than a more diplomatic approach, to the expulsion of partners. The actions of defendants were within the contemplation of the agreement. While this course of action may shock the sensibilities of some, to others it may be that once the initial decision is made, the traumatic reaction to that decision is more quickly overcome and the end result more merciful. However that course of action may appear to the reader, the possibility of exactly such action occurring is clear from reading the agreement. None of the partners had any reason to believe the agreement required anything more prior to abruptly and brusquely terminating their services.

Plaintiffs contend there was substantial evidence indicating the individual partners breached fiduciary duties they owed to plaintiffs as members of the bar. In view of our holding that the executive committee had the right to expel plaintiffs without stating reason or cause pursuant to the partnership agreement, there was no breach of any fiduciary duty.

We conclude that these parties contractually agreed to the very method of expulsion exercised by the defendants, *i.e.*, a clean, quick, and expeditious severance, with a clear method of accounting. It is not difficult to understand why parties to such a professional relationship would find this method desirable. This case, which has consumed nearly 4 years of litigation, and the attendant publicity, illustrates the virtues of this method of expulsion. The foundation of a professional relationship is personal confidence and trust. Once a schism develops, its magnitude may be exaggerated rightfully or wrongfully to the point of destroying a harmonious accord. When such occurs, an expeditious severance is desirable. To imply terms not expressed in this partnership agreement frustrates the unambiguous language of the agreement and the result contemplated.

We affirm the trial court's dismissal of the defendant partners.

THE BOEING COMPANY

[7] Plaintiffs' allegation that Boeing tortiously interfered with plaintiffs' contractual relations with their law partners is not well taken.

> The elements for the tort . . . have been repeatedly stated by this court as:
>
> (1) the existence of a valid contractual relationship or business expectancy; (2) knowledge of the relationship or expectancy on the part of the interferor; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship or expectancy has been disrupted.

Calbom v. Knudtzon, 65 Wn.2d 157, 162, 396 P.2d

148 (1964). *See also, F. D. Hill & Co. v. Wallerich*, 67 Wn.2d 409, 407 P.2d 956 (1965); *Corinthian Corp. v. White & Bollard, Inc.*, 74 Wn.2d 50, 442 P.2d 950 (1968).

Scymanski v. Dufault, 80 Wn.2d 77, 82, 491 P.2d 1050 (1971).

The first two elements may be conceded; as evidenced by the previous discussion, there was a partnership agreement and Boeing knew plaintiffs were partners in the law firm and members of the executive committee.

Issue is taken with the third element, *i.e.*, intentional interference inducing or causing termination of the relationship or expectancy.

Interference is defined as "the act or process of interfering . . . the act of meddling in or hampering an activity or process"; interfere is defined as "[T]o enter into or take a part in the concerns of others." *Webster's Third New Int'l Dictionary* 1178 (1969). Plaintiffs contend the following evidence is sufficient to require this issue to go to the trier of fact:

1. There existed a special relationship between Boeing and the law firm, in that three former partners of the firm held top executive positions with Boeing. Those positions were president, chairman of the board, chief executive officer; senior vice-president and corporate secretary; and vice-president. Close personal and professional contact was maintained between members of the firm and these officers in both the social and business context.

2. The executive committee extended to Boeing preferential treatment regarding legal fees; per diem rates were lower than the rates charged its other clients.

3. At least two of the Boeing executives were aware: (a) that plaintiffs were the strongest proponents advocating an upgrading of the Boeing fee schedule; (b) that Francis Holman was gaining a reputation as an independent legislator, free of restraint from his law clients, *i.e.*, Boeing.

4. On April 1, 1969, after the news article classifying

Senator Holman as a tax maverick, the president of Boeing called the managing partner of the law firm and over lunch advised him that Boeing wanted Francis Holman removed from all Boeing legal work. Plaintiffs contend Boeing's request that Francis Holman no longer perform legal work for them is not because of the fees he charged—that being a mere contrivance. As stated in appellants' brief on page 48:

> [T]he real reason for Allen's order was that he was so antagonized by the position of both appellants regarding the cut rate fees being charged to Boeing and by Senator Holman's legislative positions, that he simply decided that both appellants must be rendered powerless to continue.

5. Late in April, after Senator Holman's speech on the floor of the Senate, the three Boeing executives, who were former law partners, were highly agitated by what they understood to be the contents of the speech. One of them then telephoned the managing partner, stating in part, that some of the information contained in the speech came to Senator Holman by reason of his being a lawyer for the company and obtained as a result of that relationship. Plaintiffs contend this statement was not true.

6. Between the time of the speech, and May 7, the managing partner had discussed the Boeing reaction to the speech with at least some members of the executive committee. One member who was going on vacation in late April wrote a memo regarding his position toward the expulsion of plaintiffs. Another member of the executive committee had subsequently returned from vacation and did attend the May 7 meeting.

7. The May 7 meeting was held in a hotel room rented to Boeing, which was used for "things" that involved Boeing. The bill for meals consumed at that meeting was signed for by the managing partner on behalf of Boeing.

Finally, plaintiffs contend that whether Boeing ordered the firm to expel plaintiffs or only that they be removed from all Boeing's work is "a distinction without a difference." Boeing had an absolute right to request the firm to not allow Francis Holman to perform any legal work for it.

Kimball v. PUD 1, 64 Wn.2d 252, 391 P.2d 205 (1964); *Dill v. PUD 2*, 3 Wn. App. 360, 475 P.2d 309 (1970).

Interference is the act of meddling or entering into concerns of others. Here, the act of interfering culminates in the telephone call made to the managing partner by a Boeing executive after the speech upon the Senate floor. However, Boeing still retained this law firm. In the opinion of the company, rightfully or wrongfully, its economic interest was being threatened by the acts of a member of that firm. Boeing had a right to complain or protest that person's action to the management of the firm. We cannot infer any additional conversation, there being none of record other than as reflected in note 2. The evidence presented does not create a valid inference that Boeing told the firm what actions they should take with regard to the plaintiffs; nor can one go a step further and infer that if they didn't take action to expel plaintiffs, the Boeing business would go elsewhere.

[8] Assuming arguendo that a trier of fact could decide the reasons given by Boeing for removing Francis Holman from doing Boeing's legal work were not credible, all that would remain would be speculation and suspicion as to what the true reasons were or the extent of Boeing's involvement in the expulsion. *Cf. Jones v. Leslie*, 61 Wash. 107, 112 P. 81, 48 L.R.A. (n.s.) 893 (1910); *Sears v. Teamsters Local 524*, 8 Wn.2d 447, 112 P.2d 850 (1941). Suspicion, speculation or conjecture are insufficient to support a factual determination in favor of the plaintiffs. *Sortland v. Sandwick*, 63 Wn.2d 207, 386 P.2d 130 (1963); *Lamphiear v. Skagit Corp.*, 6 Wn. App. 350, 493 P.2d 1018 (1972).

[9] Plaintiffs contend that the discovery of this much evidence was an uphill battle; further, when dealing with individuals who are as sophisticated as the people involved here, the possibility of obtaining direct evidence is practically nil. Thus, they invite the court to be more lenient in projecting inferences from circumstantial evidence. We disagree. The burden of proof lies with the party instituting the action. That burden must remain constant.

[10] Admittedly, the defense of justification or privilege rests upon the alleged interferor. *Scymanski v. Dufault*, *supra* at 87; *Calbom v. Knudtzon*, 65 Wn.2d 157,

163, 396 P.2d 148 (1964). But here it is Boeing's business interest, and their attorney-client relationship, to which Boeing rightfully or wrongfully was directing its complaint. That complaint was being made to its lawyers. This is a valid and justifiable interference. 4 Restatement of Torts § 766-74 (1939). As the trial court so aptly noted, there was no showing of improper interference, but merely suspicion and assumptions on behalf of plaintiffs.

We affirm the trial court. There is insufficient evidence to justify the submission of the issue of interference with the business relationship to the jury; and further, based upon this evidence, Boeing had a justifiable right to register a complaint with the law firm.[5]

Conspiracy

[11] Lastly, the plaintiffs claim the defendants conspired together to cause their expulsion and subsequent damage. The test of the sufficiency of evidence in the matter of conspiracy is that the facts and circumstances relied upon must be inconsistent with a lawful or honest purpose, and reasonably consistent with the existence of a conspiracy. *Baun v. Lumber Workers Local 2740*, 46 Wn.2d 645, 284 P.2d 275 (1955). Where mere suspicion is raised by the evidence, there is not a sufficient basis to support a finding of conspiracy. *Corbit v. J. I. Case Co.*, 70 Wn.2d 522, 424 P.2d 290 (1967); *see also* 45 Am. Jur. 2d *Interference* § 50 (1969). Since we have found plaintiffs failed to produce substantial evidence to support their other allegations, the conspiracy count must likewise fall.

We therefore conclude there was insufficient evidence to support a verdict against any of the defendants; the judgment of the trial court is affirmed.

Green, C. J., and McInturff, J., concur.

5. Boeing further contends that a client has an absolute right to require a firm to expel a partner or terminate an employee in exchange for its business. We do not reach this question; nor was it considered inasmuch as no authority was cited for that proposition.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FRANCIS E. HOLMAN and WILLIAM M. HOLMAN,

Appellants,

v.

J. PAUL COIE, EVELYN COIE, his wife, CHARLES I. STONE, NAOM STONE, his wife; HAROLD F. OLSEN, JEANNE OLSEN, his wife; ANDREW M. WILLIAMS, EDITH WILLIAMS, his wife; BURROUGHS B. ANDERSON, ALLISON ANDERSON, his wife; F. THEODORE THOMSEN, GRETCHEN THOMSEN, his wife; JOHN W. ELLIS, DORIS ELLIS, his wife; DEFOREST PERKINS, JEAN PERKINS, his wife; ROBERT S. MUCKLESTONE, SUSAN MUCKLESTONE, his wife; LUCIUS H. BIGLOW, JR., NANCY BIGLOW, his wife; DAVID E. WAGONER, MARY WAGONER, his wife; RICHARD E. WILLIAMS, KARLA WILLIAMS, his wife; H. WESTON FOSS, PHYLLIS FOSS, his wife; RICHARD E. WALKER, MARCIA WALKER, his wife; J. SHAN MULLIN, LEE MULLIN, his wife; JAMES M. HILTON, LU HILTON, his wife; DOUGLAS P. BEIGHLE, GWEN BEIGHLE, his wife; J. DAVID ANDREWS, HELEN ANDREWS, his wife; RICHARD R. ALBRECHT, CONSTANCE ALBRECHT, his wife; CALHOUN DICKINSON, JOAN DICKINSON, his wife; and THE BOEING COMPANY, a Delaware corporation,

Respondents.

No. 854-42442-III

Division Three

ORDER DENYING PETITION FOR REHEARING

The court having considered the appellants' petition for rehearing and being of the opinion that it should be denied,

IT IS ORDERED that the petition be and it is hereby denied.

Dated this 13th day of June, 1974.

By the Court:

s/DALE M. GREEN
Chief Judge

William M. Lowry, *Clerk* Reginald N. Shriver, *Deputy*

The Supreme Court
State of Washington, Olympia 98504
Area 206 753-5080

August 28, 1974

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Seattle, Washington 98101

Gentlemen:

Re: No. 43339—*Holman v. Coie, et al.*

The Petition for Review in the above entitled case will be considered without oral argument on Friday, September 20, 1974.

Very truly yours,

s/REGINALD N. SHRIVER,
Deputy Clerk

William M. Lowry, *Clerk* Reginald N. Shriver, *Deputy*

The Supreme Court
State of Washington, Olympia 98504
Area 206 753-5080

September 20, 1974

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Gentlemen:

Re: No. 43339—*Holman v. Coie, et al.*

A Department of the Court considered the Petition for Review in the above entitled case and determined that the cause be continued for consideration by the En Banc Court.

Very truly yours,

s/REGINALD N. SHRIVER
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FRANCIS E. HOLMAN, et al., *Petitioners,* v. J. PAUL COIE, et al., *Respondents.*	No. 43339 (854-42442-III) ORDER DENYING PETITION FOR REVIEW

The Court having considered the petition for review of the decision of the Court of Appeals in this cause,

It is ordered that the petition be and it is hereby denied.

Dated this 24th day of October, 1974.

By the Court:

s/FRANK HALE
Chief Justice

APPENDIX C

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGE: AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION: APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . ."

ART. 1, SEC. 21, CONSTITUTION OF THE STATE OF WASHINGTON.

"*Trial by Jury.* The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto."

RCW 25.04.310 Causes of dissolution. Dissolution is caused:

"(1) Without violation of the agreement between the parties,

(a) . . .

(b) . . .

(c) . . .

(d) By the expulsion of any partner from the business *bona fide* in accordance with such a power conferred by the agreement between the partners; (Italics supplied)

(2) In contravention of the agreement between the partners, where the circumstances do not permit a

dissolution under any other provision of this section, by the express will of any partner at any time;

(3) . . .

(4) . . .

(5) . . .

(6) . . ."

RCW 25.04.380 Rights of partners to application of partnership property.

"(1) . . .

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have,

(i) . . .

(ii) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) . . .

(c) . . .

(i) . . .

(ii) . . ."

RESPONDENT'S BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-901

FRANCIS E. HOLMAN and WILLIAM M. HOLMAN,
Petitioners,

v.

J. PAUL COIE and EVELYN COIE, his wife; CHARLES I. STONE and NAOM STONE, his wife; HAROLD F. OLSEN and JEANNE OLSEN, his wife; ANDREW M. WILLIAMS and EDITH WILLIAMS, his wife; BURROUGHS ANDERSON and ALLISON ANDERSON, his wife; F. THEODORE THOMSEN and GRETCHEN THOMSEN, his wife; JOHN W. ELLIS and DORIS ELLIS, his wife; DEFOREST PERKINS and JEAN PERKINS, his wife; et al.,
and
THE BOEING COMPANY, a Delaware corporation,
Respondents.

BRIEF OF INDIVIDUAL RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

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v.

J. PAUL COIE and EVELYN COIE, his wife; CHARLES I. STONE and NAOM STONE, his wife; HAROLD F. OLSEN and JEANNE OLSEN, his wife; ANDREW M. WILLIAMS and EDITH WILLIAMS, his wife; BURROUGHS ANDERSON and ALLISON ANDERSON, his wife; F. THEODORE THOMSEN and GRETCHEN THOMSEN, his wife; JOHN W. ELLIS and DORIS ELLIS, his wife; DEFOREST PERKINS and JEAN PERKINS, his wife; et al.,
and
THE BOEING COMPANY, a Delaware corporation,
Respondents.

BRIEF OF INDIVIDUAL RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW

The Order of the Supreme Court of the State of Washington denying Petitioners' Petition for Review appears at page A-24 of the Petition and is reported at 84 Wash. 2d 1011. Pages A-1 through A-19 of the Petition contain the Opinion of the Court of Appeals

of the State of Washington, which Opinion is reported at 11 Wash. App. 195. The Decision and Judgment of Dismissal of the Superior Court of the State of Washington, both unreported, are annexed hereto as Appendices A and B, respectively.

JURISDICTION

The Petition for a Writ of Certiorari was timely filed on January 22, 1975. Petitioners have relied exclusively upon 28 U.S.C. § 1257(3) as the basis for this Court's jurisdiction. That section provides that final judgments may be reviewed by the Supreme Court by writ of certiorari "where any . . . right, [or] privilege . . . is . . . claimed under the Constitution . . . of . . . the United States." Respondents submit that this case does not involve any deprivation or violation of any right of Petitioners under the Constitution of the United States.

QUESTION PRESENTED

Whether the final decision of the highest state appellate court in which a decision could be obtained, affirming a state trial court's dismissal of an action involving only questions under state law between private parties to a partnership agreement, constitutes, in and of itself, "state action" under the Fourteenth Amendment to the United States Constitution?

STATEMENT OF THE CASE

This case involves the interpretation and application of a law partnership agreement. Petitioners were expelled on May 13, 1969 from a Seattle, Washington law firm in which they had been partners. That expulsion took place pursuant to a 7-to-2 vote taken at

the May 13 meeting of the ten-member executive committee* at which the Petitioners were present and cast the two dissenting votes.

Petitioners brought suit in Superior Court of the State of Washington alleging that they were expelled from the law firm in violation of the partnership agreement. They presented their evidence for 11 days and at the close of their case the trial court granted Respondent's motion to dismiss their complaint. The trial court found Petitioners had presented insufficient evidence in support of their allegations.

In an effort to obtain direct review in the highest court of the State of Washington, Petitioners first attempted to perfect a priority appeal to the Supreme Court of Washington. That court refused to hear the case directly. Thereafter, Petitioners noted and briefed an appeal to the Third Division of the Court of Appeals of Washington, which court affirmed, on state law grounds, the trial court's dismissal of Petitioners' complaint. Petitioners followed this by addressing another petition for review to the Supreme Court of Washington, which court, in the exercise of its discretion and sitting en banc, declined again to review the case.

All of Petitioners' contentions as to Respondents' alleged breach of the partnership agreement and their alleged conspiracy to do so, together with all evidence and testimony offered in support of such contentions, were carefully considered and analyzed by the trial court and by the highest state appellate court in which a decision could be obtained. Their repeated conclusion was that the partnership agreement contained no

* One member of the committee was absent on a trip.

requirement as a condition precedent to expulsion other than that it be authorized by a majority of the executive committee. There is no question but that such authorization occurred as provided in the agreement. A full and true accounting and payment was made to Petitioners strictly in accordance with the terms of the agreement. In rejecting Petitioners' position, the Court of Appeals of the State of Washington concluded that the expulsion of Petitioners from the partnership was conducted in accordance with the clear terms of the agreement:

> We conclude that these parties contractually agreed to the very method of expulsion exercised by the defendants, *i.e.*, a clean, quick, and expeditious severance, with a clear method of accounting. It is not difficult to understand why parties to such a professional relationship would find this method desirable. This case, which has consumed nearly 4 years of litigation, and the attendant publicity, illustrates the virtues of this method of expulsion. The foundation of a professional relationship is personal confidence and trust. Once a schism develops, its magnitude may be exaggerated rightfully or wrongfully to the point of destroying a harmonious accord. When such occurs, an expeditious severance is desirable. To imply terms not expressed in this partnership agreement frustrates the unambiguous language of the agreement and the result contemplated.

11 Wash. App. at 211.

REASONS TO DENY THE WRIT

Petitioners attempt to place before this Court contentions regarding their contractual interests in a partnership agreement by characterizing as "state action"

the judicial function of the state court system which served as a forum for those contentions. Followed to its logical conclusion, the argument advanced by Petitioners can be stated most simply as follows: any final decision by a court in any state in a dispute between private litigants, which dispute relates to construction of a contract under state law, is "state action" under the Fourteenth Amendment warranting the exercise of this Court's review. This position should be rejected and the Petition denied.

Less than two months ago this Court had the occasion to consider the scope of "state action" within the context of the Fourteenth Amendment [*Jackson* v. *Metropolitan Edison Co.*, -- U.S. —, 43 U.S.L.W. 4110 (Dec. 23, 1974)] and rejected an even narrower interpretation of the doctrine than that advanced here. Despite extensive state regulation of the private utility in *Jackson*, this Court rejected an electrical utility customer's contention that the action of the private electric company in cutting off her electrical service for nonpayment constituted "state action." Neither an allegedly state-conferred monopoly to Metropolitan Edison, nor the essentially public service nature of Metropolitan's function, nor Metropolitan's filing of a general tariff with the state Public Utilities Commission providing for such termination of service, converted its action in terminating service into that of the state. By contrast, the contractual partnership relationship between the parties here does not even rise to the level of the contended state involvement presented—and found insufficient—in *Jackson*. Applying Petitioners' theory here to the facts of *Jackson*, it is to be noted that this Court in *Jackson* did not regard the action of the Pennsylvania Public Utilities Commis-

sion in approving Metropolitan's tariff, or the judgment of the Third Circuit Court of Appeals in sustaining the District Court's dismissal of that petitioner's complaint, to constitute state or federal action under the Fourteenth or Fifth Amendment.

Petitioners urge that *Shelley* v. *Kraemer*, 334 U.S. 1 (1947), supports their position. But in *Shelley*, "state action" arose when the state acted affirmatively to enforce a racially restrictive covenant by enjoining parties to a real estate contract from consummating the exchange of property. In the present case, the alleged wrong complained of by Petitioners quite obviously preceded any involvement by the state judicial system. That that judicial system should follow its traditional role as a forum for such a claim, after the creation of the claim, offers no parallel to the unique situation in *Shelley:*

> It is clear that but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint.

334 U.S. at 19.

Neither the rationale of *Shelley* nor this Court's subsequent decisions on questions of "state action" support Petitioners' contention. *E.g., Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972); *Evans* v. *Abbey*, 396 U.S. 435 (1970) Petitioners' reliance upon *Board of Regents* v. *Roth*, 408 U.S. 564 (1972), and *Perry* v. *Sinderman*, 408 U.S. 593 (1972), is misplaced since in both cases there was no issue of "state action," the action complained of being clearly that of the state

university or college. Similarly, *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715 (1961), and *Public Utilities Commission* v. *Pollack,* 343 U.S. 451 (1952), are inapposite. In *Burton,* the state's involvement in the racial discrimination of a private restaurant arose from the fact that the restaurant was physically and financially an integral part of a public parking building run by the state. The *Public Utilities Commission* v. *Pollack* decision is less definitive on the question of "state action," but in that case the State Public Utility Commission placed its *imprimatur* upon the allegedly unconstitutional activities. The facts of this case offer none of the factors of state participation or involvement which were present in both *Burton* and *Pollack.* Neither *Baldwin* v. *Hale,* 68 U.S. 223 (1863), *Armstrong* v. *Manzo,* 380 U.S. 545 (1965) nor *Boddie* v. *Connecticut,* 401 U.S. 371 (1971) addressed "state action" under the Fourteenth Amendment and are totally inapposite.

In this case the trial court construed, under Washington law, the expulsion provision of a law partnership agreement. To say, as Petitioners do, that the affirmance by the Court of Appeals of the trial court's dismissal of the complaint, in and of itself, is "state action," is a drastic and unwarranted departure from established rules of construction surrounding the doctrine and effectively abolishes any distinction between state and private action. To accept Petitioners' rationale would subject every arms' length contract between private parties to ultimate interpretation by this Court. Under the judicial system of the United States, that is properly the function of the state court systems.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

No. 723217

FRANCIS E. HOLMAN and WILLIAM M. HOLMAN, *Plaintiffs,*

vs.

J. PAUL COIE, ET AL., *Defendants.*

Court's Oral Decision

HEARD BEFORE: The Honorable Stanley C. Soderland
May 3, 1972

THE COURT: I have been giving this matter a lot of serious thought as it has been progressing and I have been listening to the argument. The complaint of the plaintiffs is dismissed as against all defendants for failure of sufficient substantial evidence to take the case to the jury.

The claim against the individual defendants is based on conspiracy and breach of the partnership agreement and that partnership breach is based upon a claim of failure to give notice of the May 7th meeting and failure to fulfill a fiduciary duty that it is claimed that the partners owed to each other.

Now, first as to the individual defendants who were not of the executive committee. There is no evidence that they did anything that could in anyway be actionable. They had no power to act. And they are brought in here as defendants but there is no proof against them. The only proof that relates to one of the members is the making of a phone call which could not possibly make him the part of a conspiracy where he had no power to act. And certainly standing by itself cannot prove a case against him.

As to those individual defendants who are members of the executive committee, under the partnership agreement, they had the power to act for the partnership, and they did take some action and the claim against them is based on the action that they took.

Now, we have to start with a recognition at the outset that the rights of the parties in this lawsuit are set out in a detailed written partnership agreement, and that partnership agreement provides that the power to expel any partner is vested in the executive committee by a majority vote.

The partnership agreement does not require a showing of good cause. The partnership agreement does not provide for a hearing. The partnership agreement does not have a requirement of advance notice of the anticipated action. It does not require a statement of reasons.

Judge Callow in December 1970, in ruling on motions for summary judgment, rendered a memorandum decision and a court order. The judge at that time held that the dispute over rates is a collateral issue. That we must look to the partnership agreement and when the terms of a partnership agreement are followed then the motives of any partner in so acting becomes [*sic*] immaterial and irrelevant.

Judge Callow considered the Lycette case that has been cited here and in his order he did reserve a part of the case for trial because of that case. He held that there was a fact dispute as to the May 7th meeting, whether or not that meeting was such that a notice was required and the adequacy of the notice and damages. Now, a summary judgment proceeding that was before the court at that time requires the defendant to show to the court that there is no way the plaintiffs can state a cause of action even prior to trial. Judge Callow ruled that the plaintiffs were entitled to an opportunity to present their evidence as

to the facts surrounding the May 7th meeting and the necessity of notice of that meeting.

Now that the plaintiffs have presented their evidence, under the evidence it is clear that the Lycette case is not controlling. That was a case which held that the action taken by two directors of a corporation, when there were three on the board, who did not hold a meeting but merely took some action, cannot be action binding upon the corporation. It held that all directors are entitled to notice of any meeting which action is taken. A director known to be adverse must particularly have notice and a meeting must be held and action taken at a meeting. It is recognized in the Lycette opinion that a casual get together of directors is not a meeting, even if all of them happen to be present. The Lycette case does not hold that the directors may not have discussions between themselves or even agree upon action that will be taken. It merely holds that for action to be binding on a corporation, the action must be taken at a meeting of directors where everyone has notice.

Now here, there was a meeting on May 13, 1969 after notice and action was taken which specifically follows the power given in the partnership agreement. The May 7th meeting, under the evidence, was not a meeting which action was taken pursuant to the partnership agreement. No notice was required of it under the law or by the partnership agreement. It was an informal gathering of members of the executive committee and lack of notice to the plaintiffs did not violate any legal duty to them. There is no law which prevents partners or directors from discussing things among themselves between meetings.

There was a later summary judgment proceeding before me. Plaintiffs made further claims in that proceeding. There was a claim made in those proceedings sometime back that there was a breach of fiduciary duty by the defendant partners to plaintiff partners in that they

failed to warn of the action that they were going to take before they took it. That they acted for selfish motives contrary to their duty to the partnership as a whole by being members of the executive committee and that some defendant partners told falsehoods and placed improper pressure upon other members of the executive committee inducing them to act against the plaintiffs. I held that the plaintiffs were entitled to present their evidence. They have done so and they have not presented sufficient or substantial evidence to take it to the jury.

Partnerships, under the law, are terminable at will. Under the law, partners do not need a reason for terminating a partnership. All they have to do is follow whatever partnership agreement they have between them.

Now, this partnership agreement, which specifically does not require a showing of good cause; does not require notice of the proposed actions; does not require a hearing; does not provide for a chance to explain away the grievances but provides a power to expel by majority vote, does so intentionally and not by accident.

The plaintiffs have made their contentions very clear. Even in the testimony of Francis Holman, he testified that he felt that the partnership agreement had to be interpreted to require a showing of cause. William Holman in his testimony made the position again clear by saying that he felt there was a fiduciary duty which requires bringing up complaints or grievances against him at a meeting and thrashing it out.

The partnership agreement must be interpreted and enforced according to the language because quite logically it was intentionally written that way as a necessity to preserve the firm. These qualifications that the plaintiffs argue for are completely valid and enforceable if partners write it into their agreement. But a contract which is aimed at a clean break by expulsion rather than having a

hearing is an enforceable partnership agreement aimed at preserving the firm as opposed to a particular individual. The changing or the interpretation of the contract as plaintiffs claim would be a judicial amendment of the contract.

Partnerships by their nature are as tenuous as the feelings and the whims of the people. If differences develop between partners, there is no gain in trying to find out who was right and who was wrong. The fact of the differences may well dissolve the good will that is necessary to the partnership. Disenchanted partners who iron out their differences still have whatever personality clashes or differences that caused them in the first place which sometimes proving [*sic*] that you were right in an argument only widens the breach. These are not things that a court can judicially notice, except they are reasonable reasons why lawyers, in preparing a partnership agreement, would provide it the way they did, and when they provided it the way they did, a court must enforce it.

The agreement was carried on year after year in very similar terms, prepared by lawyers who are knowledgeable and signed by lawyers who know what they were signing. It is not legally a breach of any fiduciary duty for some partners to discuss among themselves how they feel about other partners or what grievances they may have against other partners. That happens in every partnership and it is apparent that the plaintiffs had discussion among themselves.

The law requires full disclosure of facts between partners and there is a strong fiduciary duty between partners. In the cases that come before the courts, business deals where one partner might gain an advantage over another, the requirement of disclosing to a partner every material fact cannot possibly apply to their feelings or grievances against each other aimed at whether to continue or dissolve or expel.

When a partnership agreement calls for nothing more than a majority vote of a committee, if a vote is taken in accordance with that agreement, a court or jury has no right to go behind it to ask the motives of any partner, or which partner talked to whom, or why they acted like [*sic*] they did. To do so would destroy the agreement. Each one of these partners was able to rely upon this, even when he was a partner, that the partnership had the power to act against any other partner who might possibly be a subject of feelings by partners, that expulsion was in order and the firm would then continue. And this applied equally to partners.

Of course, it goes without saying that the fact that the partners happened to be second generation members of the law firm has no legal significance of any kind. The fact that colloquially this has been referred to as the Holman firm may cause some people to do some loose thinking, but that has no affect on the legal rights and everyone here understands that.

There isn't any evidence from which a jury could find that the defendant partners acted contrary to their duty to other members of the executive committee, or their duty to other members of the firm in order to advance themselves or gain personal advantage with clients. There has been innuendo, there has [*sic*] been suggestions, there has [*sic*] been hints but there hasn't been evidence. There is no evidence of any falsehood or improper pressure by one partner on another. Again, there has been innuendo and there have been inferences upon which other inferences are built by way of argument and suggestion but not sufficient evidence.

There is a complete failure of conspiracy among the partners or conspiracy with Boeing. Merely because a Boeing room was used is not the type of evidence that will support a claim of conspiracy.

In opening statement, plaintiff's counsel said that certain partners seized upon the senate speech and upon Boeing's complaint as a chance to eliminate a threat to a corporate power structure and met with other partners who had corporate connections and conspired with and met with Boeing officials to eliminate this threat for the purpose of destroying Francis Holman's income and his professional career. That this is what the case is built upon. These are the claims. The evidence does not bear it out.

Plaintiff's claim of conspiracy is that the defendants conspired to do by unlawful means what they had a clear right to do by simply voting. These claims were made, therefore plaintiffs had a right to present their evidence to prove them. It is my duty then to see whether or not I think that evidence is sufficient under the law.

A jury must have evidence of circumstances from which reasonable inferences can be drawn. Suspicions are not enough. And inferences cannot be based upon inferences. On a charge of conspiracy, the law requires the evidence to be clear, cogent and convincing.

Now, we had a lot of evidence in this case as to the differences between the partners and criticisms and various discussions as to how the firm was to be handled. As Judge Callow said in his earlier order, these differences as to how to run the partnership, what rates are to be charged, are all collateral issues. Who is right and who is wrong, who is reasonable or who was unreasonable is immaterial to the issues in this lawsuit. These relations between the partners came into the lawsuit to test out the claim of the reasons for the expulsion but they were all collateral items, and the evidence that the plaintiffs wanted an opportunity to prove did not come to pass and therefore indicated that all of that evidence was collateral. But there was no way of knowing it ahead of time.

The claim against the defendant Boeing is that they intentionally interfered with the partnership relation causing the law firm to breach the partnership duties and to expel the plaintiffs and that they conspired to bring that about. There is a failure of evidence as to the defendant Boeing. As to William Holman, there is no evidence that Boeing took any action that affected that plaintiff except by indirectly inferring that action which affected one plaintiff would affect the other.

Again, there are innuendos and there are suspicions. There are inferences based upon inferences as to facts and as to claimed motives but you must start with a proposition that a client has an absolute right to dictate what lawyer shall work on his law business. Management of the corporate client has an absolute right to make a demand upon the management of the law firm and no law requires the client to answer in damages if it does so. And this is regardless how it might affect that lawyer in his position with his law firm. And the client has no duty to talk directly to the lawyer involved. Management is entitled to speak to management. This is a matter of a client's right to conduct his own affairs and if that results in incidental interference with a lawyer's position in his firm, that is not actionable. The client has a privilege to tend to his own business in the handling of his work.

Now, the charge is that Boeing did this intentionally for the purpose of destroying Francis Holman's income and his professional career and removing a threat to Boeing and to the corporate power structure. It is charged that this was done by conspiracy. That means by unlawful means. The claim is deliberate falsehoods passed on for the purpose of accomplishing this result.

Now, there is evidence in dispute as to what Francis Holman said on the floor of the senate. There is evidence that he charged a tax windfall because Boeing and others had been assessed at 33⅓%, meaning in the past it had

been assessed at 33⅓%. Then there is some evidence that some people understood him to say current assessment at 33⅓%. Evidence that Boeing repeated the current version at least to one of the partners. The jury could find that that was the repeating of an incorrect statement. Boeing interpreted this information as information learned as a Boeing lawyer and there is a direct conflict in the evidence on that. The jury could find that Boeing strongly suggested, at least to one partner, or strongly implied something which was in fact not completely accurate. Now, a jury could find these statements to be incorrect but it is another matter to find that they are actionable falsehoods supporting a conspiracy and a deliberate effort to get the Holmans expelled from the firm.

Boeing is not a total stranger to this situation. An unrelated third party has very limited rights as to what he can do in interfering with someone's business relationships. But Boeing is a client with a legitimate interest and a legitimate business reason in deciding what lawyers work on their law business and they therefore have a right to render a complaint to the law firm and under the law do not run the peril of first having to check out to be absolutely correct in everything they said unless there is some evidence from which an inference can reasonably be drawn that it was done maliciously or intentionally for the purpose alleged.

There is no direct evidence in this case that Boeing ever demanded the expulsion of either plaintiff from the law firm. There is direct evidence that they removed, or requested the removal of the partners, who are the plaintiffs, from their work. But the direct evidence goes no further than that to get to the conclusions the plaintiffs want to draw. There is not enough evidence that reasonable minds could make those inferences. A jury is not entitled to, under this evidence, to [*sic*] return a verdict against the Boeing Company. Bring in the jury.

* * *

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

No. 723217

FRANCIS E. HOLMAN and WILLIAM M. HOLMAN, *Plaintiffs*,

vs.

J. PAUL COIE, ET AL., *Defendants*.

Judgment of Dismissal

THIS MATTER having come on regularly for trial before the undersigned judge of the above entitled court, sitting with a jury on April 17, 1972, plaintiffs being represented by DeGarmo, Leedy, Oles & Morrison, their attorneys, the individual defendants being represented by Helsell, Paul, Fetterman, Todd & Hokanson, and Culp, Dwyer, Guterson & Grader, their attorneys, and the defendant, The Boeing Company, being represented by Guttormsen, Scholfield & Stafford, its attorneys, and the court having proceeded with the impaneling of the jury, opening statements and the taking of testimony offered by the plaintiffs, and plaintiffs having rested, and defendants, thereupon having interposed their challenges to the sufficiency of the evidence adduced by plaintiffs to take the case against any of the defendants to the jury, and defendants having simultaneously moved for dismissal of plaintiffs' complaint with prejudice, and the court having considered the arguments of counsel and the written memoranda of authorities filed herein, and being fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED that the challenges of the defendants to the sufficiency of the evidence be and they are hereby sustained.

IT IS FURTHER ORDERED that plaintiffs' complaint against the defendants and each of them be and the same is hereby dismissed with prejudice and with costs taxed in favor of defendants.

DONE IN OPEN COURT this 11th day of May, 1972.

STANLEY C. SODERLAND
Judge

Presented by:

WILLIAM A. HELSELL
Of Attorneys for Individual Defendants

Approved for entry:

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Of Attorneys for The Boeing Company